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In re Application of
Cox et al.
Application No. 10/067,851
Filed: February 7, 2002
Attorney Docket No. 2001-0330

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OFFICE OF PETITIONS

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 14, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the present nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

Petitioner states that the present nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on January 28, 2003. A review of the file record discloses that a Notice to Rescind was received in the USPTO on January 27, 2003.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>.

In the present application, a notice to rescind was filed prior to the filing date of a counterpart application in an eighteen month publication country. Therefore, since receipt in the USPTO of the request to rescind prior to the filing date of a

counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

This application is not in fact abandoned. For the reason stated above, no petition fee is being charged.

This application is being forwarded to Technology Center 2600 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 306-5589.

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